IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

Crl.MC.No. 3760 of 2005

CC.262/2005 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM
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PETITIONER:
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1. R.THULASIDAS, AGED 40 YEARS,
MADHDU SADANAM, CHERAVALLY, KAYAMKULAM,
FORMER SECRETARY S.N.D.P. BRANCH NO 327,
KAYAMKULAM.

2. SULOCHANA, AGED 45, W/O.KUTTAPPAN,
FROM PLAKKATTUTHARAYIL, CHERAVALLY,
KAYAMKULAM NOW RESIDING AT ASHA BHAVANAM,
NADUVILE MURI, NOORANAD.

BY ADV. SRI.R.PADMAKUMAR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. R.KUTTAPPAN, AGED 60 YEARS,
S/O.RAMAN, ASHA BHAVANAM, NADUVILE MURI,
NOORANADU.

R1 BY PUBLIC PROSECUTOR MR. BREEZE.M.S.
R2 BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01-03-2007, THE COURT ON 23-5-2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.A.NO.13809/2005 IN CRL.M.C.NO. 3760/2005

DISMISSED.

24-5-2005 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.M.C.3760 of 2005

DATED THIS THE 24TH DAY OF MAY 2007

ORDER

The petitioners, who are the accused in C.C.No.262/2005 with respect to the offence under Sections 465 & 471 read with Section 34 of the Indian Penal Code, have sought for setting aside the proceedings. It is pointed out that C.M.P.has been filed as a protest complaint after the police referred the same as baseless. It is the case of the complainant that accused committed the above offences as they colluded and concocted a false marriage certificate incorporating false entries in a new register at the S.N.D.P.Yogam Branch and got the same produced in the civil court. It is the case of the complainant that he is an ex-service personnel and his wife died in the year 1990. The 2nd accused in the complaint is the maid-servant engaged by him and that she gave birth to a child in his relationship with her. Subsequently the 2nd accused/2nd petitioner attempted to trespass into his residence and O.S.No.114/2002 was filed by him against her. O.S.No.216/2003 was instituted by the daughter of

the complainant against the attempted trespass by the 2nd accused. O.S.No.114/2002 filed by the complainant and O.S.No.216/202 filed by the daughter of the complainant in the court of Munsiff, Mavelikkara were tried together. The above civil suits were dismissed. Exts.B1 to B3 produced in the civil suit at the instance of the 2nd accused is the result of creation of false evidence and fabrication by A1 and A2. A1 is the then Secretary of S.N.D.P.Yogam Branch. It is the allegation in the complaint that in support of the version of the 2nd accused in the civil case that the complainant has married her as per Hindu customary rites on 13-7-1997, a marriage declaration (vivaha pathrika) and marriage certificate were produced. It is alleged therein that on enquiries it was found that the first accused has fabricated a new marriage register and in the first page of the same false entries have been made that the complainant and the 2nd accused have got married. It is mentioned in the complaint that the very appearance of the register would show that the entries are false and that the person mentioned therein as the guardian of the 2nd accused have died long back. Further more, there is no signature in the column by the bridegroom where he has to affix

his signature. It is the contention of the revision petitioners that the offence alleged under Section 454 I.P.C. will not lie as in order to constitute a false document, the document must be purported to be signed, made or sealed by a person who did not in fact do it. It is also contended that there is no specific allegation in Annexure-I complaint that the allegedly false entries in the marriage register are in the handwriting of petitioners 1 and 2. It is also contended that the civil court in Annexure-2 judgment has found that the above documents are genuine and valid.

2. The 2nd respondent/complainant has filed a counter affidavit alleging that the accused/petitioners have colluded and forged a marriage register of Cheravally S.N.D.P.Sakha No.327 for producing as evidence before the Munsiff Court, Mavelikkara in O.S.No.114/2002. The above suit was instituted by him seeking permanent prohibitory injunction against the 2nd petitioner herein. She had raised the contention that she is his legally wedded wife and that the marriage was solemnized on 13-7-1997. In fact no such marriage was solemnized on 13-7-1997 or on any other date. The 2nd petitioner had also

produced a certificate dated 30-3-2002 alleged to have been issued by the Secretary of Cheravally S.N.D.P.Branch before the Munsiff Court, Mavelikkara stating that the so-called marriage was solemnized at the residence of the bride. He has also produced true copy of the same. According to him, the above certificate is a false one and a false register has been fabricated for the purpose of creating evidence that the marriage between himself and the 2nd petitioner was solemnized at the office of Cheravally S.N.D.P.Branch. The concerned register was summoned in the proceedings under Section 202 Cr.P.C. True copy of page 1 of the above register is also produced herein. It is also pointed out that a perusal of the relevant page would show that it is a fabricated one. It is pointed out that the register did not contain the signature or thumb impression of the complainant and that the above column is blank. It is also pointed out that in the column for the name of the guardian of the bride, the name written is Narayanan but the signature contained in the column can be read as Sadasivan. In the column for the signature of the guardian of the bridegroom, nobody has signed. It is also stated that over the decision in

O.S.No.114/2002, the complainant has preferred an appeal as A.S.No.196/2005 in the Additional District Court, Mavelikara.

3. The complainant has also alleged in the application filed to receive documents that the Munsiff Court mainly relied a copy of the marriage certificate issued by the Kayamkulam Municipality. Copy of the above document has also been produced. Although he had filed an application to summon the concerned register of Kayamkulam Municipality the application was not considered. The complainant sent a lawyer notice to the Secretary of Kayamkulam Municipality to which the Secretary has sent a reply mentioning that no such marriage has been registered at Kayamkulam Municipality. Copy of the lawyer notice and the reply notice have also been produced. He has also produced the copy of the appeal memorandum in A.S.No.196/2005.

4. The revision petitioner has produced copies of Exts.X1 to X1(E) which are the documents produced in the suit as called for from the pension authorities. As already noted above, the complainant is an ex-serviceman. The above documents produced, it is pointed out, would show that the complainant

himself has signed in the letter addressed to the Pension authorities and also has executed affidavit as to the marriage and as to the paternity of the child. The petitioner has also produced copy of the marriage register of S.N.D.P.Branch, Cheravally wherein in the column of the signature of the bridegroom, the signature of the complainant is seen.

On a consideration of the pleadings and the documents produced, I find that this is not a fit case to invoke Section 482 Cr.P.C. and to set aside the order of the Magistrate taking cognizance of the matter. Appropriate course of action for the petitioners herein is to apply for discharge. I find that a detailed discussion of the genuineness of the documents produced etc. would be inappropriate as the matter has to be considered by the court below. All the same, there will be a direction to the court below that in case the petitioners apply for discharge the same shall be considered untrammelled by any observations contained herein. The Crl.M.C. is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

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